

FISPA

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RE: FCC Proceeding WC 06-130
Comment on Petition [of AT&T] for Expedited Interim Waiver

SUMMARY

The Petition asks the FCC to retroactively strip legal protection from the proprietary information of AT&T's competitors and turn their business secrets over to AT&T's retail sales force. Certain Computer Inquiry obligations protecting this information are continuing obligations, and these commitments cannot be eliminated by regulation nor abandoned by AT&T or any RBOC without compensation for "taking" or other "conversion" of protected property interests.

FISPA

The Federation of Internet Solution Providers of the Americas, Inc., (FISPA) is foremost an industry information source and "buyer's club" consisting at various times of 70 to 130 internet service providers, with a strong concentration in the Bellsouth footprint. Some are CLECs – facilities-based and otherwise – but most are very small "mom and pop" to medium sized ISP operations. Almost all members are intra-modal, that is "wire-line" competitors of Bellsouth or the current AT&T and pay wholesale rates to lease Bellsouth or AT&T wires.

FACTS

As recognized in Computer Inquires I and II, network operators that also retail voice and data services are in a position to abuse competing retailers that lease access to the network. For example, to develop and provision an order for DSL, an ISP must determine if the prospective end user is in a geographic area where DSL is available. This is done by checking the end user's address or phone number against an RBOC data base – which the RBOC can monitor. To have an order provisioned by an RBOC network, the ISP must furnish another RBOC data base with its sales lead's name,

address, phone number, and desired service- everything an RBOC salesman might need to identify a 'hot sales lead'. This kind of information is referred to as Customer Number Proprietary Information, or "CPNI" for short.

Since prior to Computer Inquiries I, which ordered structural separation, ISPs have complained that before they could call the customer back with the result of the 'data-dip' or before an order could be provisioned, someone from the RBOC retail sales staff would contact them about buying DSL from the RBOC. Computer Inquiries II relaxed the structural separation notion in favor of a "Chinese Wall" division, but both Orders recognized the glaring conflict of interest that every network operator/retailer has with non-affiliated retailers and the necessity of protecting the proprietary information of the ISPs and CLECs. There is anecdotal evidence that the practice of network operators leaking ISP and CLEC sales leads to RBOC retail salespersons continues today.

ARGUMENT

AT&T claims that it made prior commitments to the public and the Commission in its merger with Ameritech that are now proving to be "inefficient". AT&T agreed to structurally separate its retail and wholesale sides to respect the Computer Inquiry rules, including those protecting CPNI handed over by intra-modal competitors so that AT&T or its predecessor could provision orders, bill for access, etc. This federally protected CPNI includes names, addresses, and desired services of every ISP and CLEC sales prospect and current end user being served over the RBOC networks. Obviously, delivering this proprietary information to an RBOC's voice and/or data retail sales force would be grossly unfair to the ISP and CLEC communities and devastate their ability to continue as wire-line competitors.

Since DSL was redefined as an "information service", RBOCs that haven't otherwise agreed to continue to honor the Computer Inquiry rules publicly posture as having no continuing duties under those rules. FISPA asserts that this assumption on their part is not accurate. For example, there has been no regulatory relief granted concerning proprietary information handed over to the RBOCs as protected 'telecom' information, but which they would say is no longer considered 'telecom' information. In seeking to do away with the internal separations borne from the *Computer Inquiries*, AT&T seeks the FCC's blessing to turn over the CPNI of wire-line competitors to AT&T's retail sales force.

Most privileged and confidential communications recognized by law, such as the attorney/client privilege, the spousal communications privilege, and CPNI rules, retain the protection established at the time the communication was made. To my knowledge, Bellsouth has been silent on what it is doing or intends to do with CPNI collected from its wire-line competitors. With the upcoming Bellsouth/AT&T merger, the problem created in the AT&T Petition stands to get worse. If this waiver is granted for AT&T prior to the Bellsouth merger, it appears that after the merger the former Bellsouth will also have a green light from the FCC to turn over CPNI of its wire-line competitors to AT&T's retail sales force, further interfering with competition. Because the RBOCs and their successors have continuing and perpetual duties under relevant Computer Inquiry obligations, FISPA is speaking out against the Petition.

KELO VS NEW LONDON- PROTECTED PROPERTY RIGHTS

The continuing duty to respect the Computer Inquiry rules could of course be terminated through normal due process channels. There is a robust market for “mined information” in the US, as well as for customer lists and other lists with competitive value. Reminiscent of the facts in the recent US Supreme Court case of Kelo vs New London, with this waiver the government will be a party to “taking” valuable protected property- developed by and belonging to small business owners- and delivering it to the benefit of a larger competitor. If that is the Commission's intent, it is appropriate to consider the compensation to be paid to the ISP and CLEC owners for the CPNI by either the federal government or a third party acting “under color of law”.

Thank you for your consideration.

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Link to AT&T's Petition:

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518395242

My docs/1983 and ATT